



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

October 29, 2009

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Expires: October 29, 2010
Impacted: IRM 5.11.2.5(3) and
IRM 5.11.5.5(1)

MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS

FROM: Frederick W. Schindler /s/ Frederick W. Schindler
Director, Collection Policy

SUBJECT: Interim Guidance Memorandum for Disposing of
Surplus Proceeds and Levy Payments

The purpose of this memorandum is to reissue interim guidance memorandum dated November 3, 2008, with control number SBSE-05-1108-048, titled Interim Guidance Memorandum for Disposing of Surplus Proceeds and Levy Payments. This memorandum clarifies procedures relating to IRM 5.11.2.5(3), Disposing of Surplus Proceeds, and IRM 5.11.5.5(1), Levy Payments. Please ensure that this information is distributed to all affected employees within your organization.

IRM 5.11.2.5(3), Disposing of Surplus Proceeds states, "If surplus proceeds are received, and taxes are owed that were not listed on the notice of levy, the surplus can be offset to those taxes. However, use levy proceeds to pay the taxes listed on the levy, first. The surplus may be offset to taxes not listed on the notice of levy, even if all the notices in IRM 5.11.1.2.1 have not been given to the taxpayer for those taxes. The first notice of levy should be released, if necessary, and a new notice of levy issued to include the periods not on the first levy."

Clarification: When the IRM 5.11.2.5(3) is revised again, it will read as follows:

"If surplus proceeds are received, and taxes are owed that were not listed on the notice of levy, the surplus can be offset to those taxes. However, use levy proceeds to pay the taxes listed on the levy, first. The surplus may then be offset to taxes not listed on the notice of levy, even if all the notices in IRM 5.11.1.2.1 have not been given to the taxpayer for those taxes. The notice of levy must be released as soon as possible once the periods covered by the levy have been satisfied. If additional liabilities not covered by the original levy exist, a new

notice of levy must be issued to collect those liabilities. Please note that all statutory requirements, such as the sending of a notice of intent to levy and a right to a hearing, must be met with regard to the new notice of levy if the taxpayer has not had an opportunity for a CDP hearing under IRC § 6330 for the remaining liabilities. See IRM 5.11.1.2, *Pre-Levy Actions*.”

IRM 5.11.5.5(1), Levy Payments, states: “Credit levy payments on the date they are received. Apply the money in the most advantageous way to the government. Generally, apply it to the oldest assessment first. The taxpayer cannot designate how to apply the money because this is not a voluntary payment. Note: Levy payments should only be applied to those periods listed on the original levy. If these periods have been satisfied, a levy release should be immediately prepared and issued to the levy source.”

Clarification: When the IRM 5.11.5.5(1) is revised again, it will read as follows:

“Credit levy payments on the date they are received. Apply the money in the most advantageous way to the government. Generally, apply it to the oldest assessment first. The taxpayer cannot designate how to apply the money because this is not a voluntary payment.

Note: If the periods listed on the original levy have been satisfied; and

- Any surplus proceeds have been offset against any liabilities that were not listed on the levy; and
- Liabilities remain outstanding for periods not covered by the original levy,

Then release the original levy and prepare and issue a new notice of levy to the levy source for the remaining liabilities. Please note that all statutory requirements, such as the sending of a notice of intent to levy and a right to a hearing, must be met with regard to the new notice of levy if the taxpayer has not had an opportunity for a CDP hearing under IRC § 6330 for the remaining liabilities. See IRM 5.11.1.2, *Pre-Levy Actions*.”

If you have any questions, please feel free to contact me, or a member of your staff may contact Alan Gilds, Senior Program Analyst. Territory personnel should direct any questions, through their management staff, to the appropriate Area contact.

cc: www.irs.gov